

HAGHTY ORIGINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK-----x
KERYX BIOPHARMACEUTICALS, INC.,

Plaintiff,

- against -

07 Civ. 10376 (CSH)

PANION & BF BIOTECH, INC.,

ORDER TO SHOW CAUSE

Defendant.

-----x

Upon the Complaint filed in this action on November 16, 2007, the Declaration of Michael S. Weiss dated November 19, 2007, with attached exhibits, the Declaration of Gregg L. Weiner dated November 19, 2007, with attached exhibits, the accompanying Memorandum of Law, and all proceedings in this action, and sufficient cause have been alleged therefor, it is

hereby

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CSA
ORDERED that Defendant appear before this Court in Courtroom 17C, United

States Courthouse, 500 Pearl Street, New York, New York on the 27 th day of November,

CSA
2007, at 10:00 o'clock A.m. and show cause why an order should not be entered

1. pending trial of this action, directing Defendant, its agents, employees and attorneys, to consult in good faith with Keryx concerning prosecution of licensed patent applications, including by permitting contact between Panion's Japanese patent counsel and the patent counsel of Keryx's sublicensee, Japan Tobacco, and by requesting a three-month extension of the deadline for responding to the Japanese patent office concerning prosecution of the patent rights licensed under the parties' License Agreement, dated November 5, 2005;
2. preliminarily enjoining Defendant, its directors, officers, agents, servants, employees,

USDC SDNY
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DOC #: _____
DATE FILED: 11-19-07

attorneys, and all other persons in active concert or participation with it who receive notice of this order, (a) from interfering with Keryx's rights under section 3.1 of the parties' License Agreement to develop the Product licensed under the License Agreement, and (b) from serving a notice of termination under the License Agreement prior to January 30, 2008; and it is further

ORDERED that pursuant to 30(a), 33(a), 34(b) of the Federal Rules of Civil Procedure, expedited discovery shall commence in this action pursuant to the following schedule:

1. Within ten (10) days from service of notice thereof, each party shall respond to written discovery requests of its adversary and make responsive documents and things available for inspection and copying in New York, New York;
2. Within ten (10) days from service of notice thereof, each party shall respond to written interrogatories of its adversary;
3. Within ten (10) days from service of notice thereof, each party shall appear for deposition by its adversary in New York, New York; and it is further

ORDERED that pursuant to Rule 65 of the Federal Rules of Civil Procedure, the following is the schedule for submission of papers in connection with Plaintiff's motion for a preliminary injunction:

1. On or before the 20th day of November, 2007, at 5 p.m., Plaintiff shall serve upon Defendant (or its counsel if any) all declarations, memoranda of law and other papers in support of Plaintiff's motion for preliminary injunction by electronic filing or email;
2. On or before the 23rd day of November, 2007, at 5 p.m., any opposition papers shall be served upon counsel for Plaintiff by electronic filing or email;

3. On or before the 26th day of November, 2007, at 5 p.m., any reply papers shall be served upon Defendant (or its counsel if any) by electronic filing or email;

ORDERED that pursuant to Rule 16 of the Federal Rules of Civil Procedure, an

accelerated schedule for final disposition of the case shall be in effect such that all dispositive

MSJ motions shall be fully submitted by the 21 ^{*nd*} day of December, 2007 and that trial on the

CMW merits shall be set for the 22 ^{*nd*} day of January, 2008; and it is further

ORDERED that Exhibit 1 to the Declaration of Michael S. Weiss shall be filed under seal, and that the Clerk of the Court shall maintain such exhibit under seal pending further order of the Court; and it is further

ORDERED that any portion of papers to be filed either in support of or opposition to

// Plaintiff's motion for a preliminary injunction that contain confidential and/or proprietary information shall be filed under seal; and it is further

ORDERED that Plaintiff shall serve copies of this Order and the papers upon which it is granted by email and expedited courier service upon Defendant (or its counsel if any) on or

CMW before November 20 ^{*th*}, 2007 at 5:00 o'clock P.m.

MSJ Dated: New York, New York
November 19, 2007.

Charles S. Hagedorn
United States District Judge

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